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FROM: Guatemala City

TO: Secretary of State

NO: 307, February 6, 6 p.m.

DEPARTMENT OF STATE
BUREAU OF
INTER-AMERICAN AFFAIRS
FEB 9 - 1953

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PRIORITY

PASS DEFENSE

In an action which seems likely to reduce to vanishing point independence of Guatemalan judiciary and which has greatly heightened acute sense of security here, Guatemalan Congress at 12:30 a.m. today removed all Justices of Guatemalan Supreme Court on ground they had demonstrated unfitness by granting an injunction against President Arbenz and other agrarian authorities in response to petition of January 17 by Ernesto Leal Perez, a Guatemalan landowner, to set aside President's decree confirming what plaintiff termed improper application of Agrarian Reform Law by Agrarian Council in expropriating 605 acres of his land (my despatch 665, January 30). On February 3 Court had voted 4 to 1 to consider petition and 3 to 2 to grant provisional injunction. Case hinged on constitutionality of Article 98 of Agrarian Reform Law which prohibits acceptance of any appeal against actions of agrarian reform officials, including Guatemalan President, by any non-agrarian authority. President Arbenz on February 5 informed Supreme Court he would not appear before it to contest provisional injunction but would transmit case to Congress.

In message to Congress he pointed cut "Supreme Court not only has not complied with Article 98 of law but has also ignored clear mandate of Article 170 of Constitution which prohibits courts from acting in matters over which the laws forbid them jurisdiction. He added "if Article 98 of law is not constitutional...it must be obeyed as long as it is law (and unconstitutionality of law may be determined only by an action passing through all court levels in a normal manner after which Congress must consider matter). He asked Congress to determine whether Supreme Court could accept petition for injunction in agrarian reform matters. In voting to remove Judges Guatemalan Congress acted on a resolution presented by pro-Communist Roberto Alvarado Fuentes, which justified measure by asserting that in accepting petition for injunction Court "revealed ignorance of law which showed its unfitness and manifest incapacity for administering justice." (Article 115 of Guatemalan Constitution provides Congress may remove justices for "notorious

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"notorious misconduct, negligence or unfitness.") Communist Victor Manuel Gutierrez and suspected Communist Ernesto Marroquim Wyss championed resolutions in Congress after voting to remove old justices, Congress proceeded to elect following group of new justices: Marcial Mendez Montenegro, ex-Attorney General and Minister of Interior in President Arevalo's Cabinet, now member of Parliament reportedly fairly good lawyer; and Associate Justices: Luis Edmundo Lopez Duron, Justice of previous Supreme Court who voted against acceptance of petition for injunction; Ricardo Chaves Nachmann, ex-Minister of Interior in Arbenz' Cabinet, and General Counsel of National Agrarian Department, member of political committee of Parliament; and Virgilio Zapata Mendilla, member National Electoral Board, leader of pro-Communist wing of political party RN. Retaining position expected to be filled today. New Justices took oath before Congress early this morning.

SCHOENFELD

MRM:ED/12

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